

**California High-Speed Rail Authority**



**RFP No.: HSR 13-57**

**Request for Proposal  
for Design-Build Services for Construction  
Package 2-3**

**Book II, Part B.2 – Southern California Gas  
Master Agreement**

**MASTER AGREEMENT**  
BETWEEN  
CALIFORNIA HIGH-SPEED RAIL AUTHORITY  
AND  
SOUTHERN CALIFORNIA GAS COMPANY

**PARTIES:**

The State of California, acting by and through California High-Speed Rail Authority (“Authority”), which term Authority includes its officers, agents, contractors, successors and assigns and other public agencies performing projects in connection with California’s High-Speed Rail Project (“HSR Project”), and Southern California Gas Company (“Owner”), which term “Owner” includes its officers, agents, contractors, successors and assigns, hereby agree effective July 1, 2014, as follows:

**RECITALS:**

- A. Owner owns, operates or maintains, in the State of California, Facilities as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission (“CPUC”).
- B. Authority is responsible for the HSR Project, as defined herein, and from time to time the HSR Project requires the Relocation of Owner's Facilities.
- C. Authority and Owner desire to enter into a contract establishing the terms and conditions to perform the above-referenced Relocations.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Master Agreement (“Master Agreement”) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Authority and Owner agree as follows:

- 1. Scope of Agreement. This Master Agreement shall govern exclusively the obligations of Authority and Owner in regard to Facility Work described herein in lieu of determination under any other laws, and prior contracts and agreements which would be applicable to this work. This Master Agreement shall apply throughout the State of California to the Authority’s HSR Project.
- 2. Definitions. As used in this Master Agreement, the following terms have the following meanings:
  - (A) “Facility” or “Facilities” means any Utility owned and/or operated by Owner.
  - (B) “Facility Work” means all services, labor, materials, and other efforts to be provided and performed including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, land and/or property rights acquisition, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, systems testing, preparation of CADD As-Built, coordination with jurisdictional authorities

(governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design and construction required for Relocation of Facilities or construction of new Facilities in conjunction with the HSR Project.

- (C) “HSR Project” means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 et seq. of the Streets and Highways Code and Sections 185030 et seq. of the Public Utilities Code.
- (D) “Notice to Owner” means a formal written notice to relocate issued by the Authority to Owner in accordance with Paragraph 24 below. The Notice to Owner shall specify the place of Relocation, or location from which the conflicting Utility Facility is to be removed, and specifying a reasonable time within which the Facility Work is to be commenced.
- (E) “Relocation” means removal, relocation, abandonment, protection or any other rearrangement of Owner's Facility as ordered and approved by Authority to accommodate Authority's HSR Project. Relocation shall include, but not be limited to: preparation and submission by Owner and approval by Authority of relocation plans or drawings sufficiently engineered to allow construction of the ordered Relocation, and a detailed estimate by Owner of the actual and necessary cost of the ordered Relocation.
- (F) “Utility” means Owner’s gas Facilities, and communications associated therewith existing at the time of Owner’s receipt of Notice to Owner. The necessary appurtenances (including, but not limited to, pipelines and conduits, together with valves, pipeline integrity devices, metering, measuring, regulating, cathodic protection, and other appurtenances for the transportation of natural gas and energy) to each Facility shall be considered part of such Utility. Without limitation, any service line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such service line. However, when used in the context of the removal, relocation and/or protection of facilities to accommodate the HSR Project, the term “Utility” or “utility” specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such facilities, and (b) cellular telecommunications towers and related facilities, except to the extent any of the foregoing constitute part of or otherwise provide the support structure for Owner’s advanced metering infrastructure (AMI) or supervisory control and data acquisition (SCADA) equipment existing at the time of Owner’s receipt of Notice to Owner.
- (G) “Wasted Work” means any Facility Work performed by Owner pursuant to a Relocation Notice for a Relocation rendered useless or unnecessary as a result of the Authority's cancellation and/or scope of changes as agreed by both parties of the HSR Project.
- (H) “Betterment” means the difference in cost between the intended Relocation of Owner's Facility proposed and submitted by Owner for Authority's approval and a Relocation which would provide the Owner with equivalent substitute Facilities for those Facilities requiring Relocation to accommodate Authority's project. As employed herein, betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, or regulatory requirement.

(I) "Private Right-of-Way of Owner" means a property right held by Owner in the form of either a recorded or fully executed deed in the usual form or other valid instrument recorded or otherwise fully executed and conveying a property right for the Facility within the HSR Project right-of-way, including any rights subject to a recorded Joint Use Agreement (JUA) or Consent To Common Use Agreement (CCUA). Private Right-of-Way of Owner shall also mean a property right held by Owner that has been acquired through a prescriptive easement, where the Owner's normal and ordinary business records demonstrate installation, maintenance and/or use of the Facility for a period of five (5) years or greater prior to the time of the proposed Facility Work that is the subject of Relocation pursuant to a Notice to Owner under this Master Agreement.

(J) "Hazardous Material(s)" means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

3. Scope of Work. The work to be performed under this Master Agreement shall be all work necessary to accomplish Relocation of Owner's existing Facilities as necessitated by Authority's HSR Project.

4. Notice to Owner. All work under this Master Agreement shall be preceded by the issuance of a written Notice to Owner by Authority.

5. Relocation Costs. The cost of all work to complete the Relocation of Owner's existing Facilities necessitated by Authority's HSR Project shall be calculated pursuant to the provisions of Paragraph 6 and shall be performed at the Authority's sole expense.

6. Relocation Cost Calculation. Cost of Relocation includes the actual and necessary cost of all engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in the Relocation, except:

(A) The Authority shall be entitled to credits as follows:

- i. The amount of any Betterment to the Facility resulting from such Relocation.
- ii. The salvage value of any materials or parts salvaged and retained by Owner.
- iii. If a new Facility or portion thereof is constructed to accomplish such Relocation, an amount bearing the same proportion to the original cost of the displaced facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of facility}}{\text{Normal expected life}} \times \text{Original cost}$$

(B) Unless otherwise expressly provided for herein, a credit shall not be allowed against any portion of the cost that is otherwise chargeable to Owner.

7. Service Facilities. This Master Agreement does not apply to "Service" facilities for which Authority is the regularly billed sole customer for the commodity provided, or as defined by California Public Utilities Commission.

8. Partial Interests. Where Owner is the owner of a part of, or of a present undivided part interest in, any Facility, this Master Agreement shall apply to the extent of such interest.
9. Project-Specific Utility Agreement. For each Relocation, Authority and Owner shall enter into a project-specific Utility Agreement setting forth, among other things, the Relocation arrangements between the parties regarding cost apportionment, billing, payment, documentation, documentation retention, and accounting.
10. Project Undertaking. When all or a portion of the Facility Work is to be performed by the Owner, the Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to: (i) perform work with its own forces, or (ii) cause the work to be performed by a contractor, employed by Owner pursuant to a written contract, or (iii) cause the work to be performed through a contract with a qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Owner, or as otherwise agreed upon in the specific Utility Agreement, the Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the Authority's reasonable schedule.

11. Wasted Work. Authority will pay, in its entirety, that portion of the cost of the Relocation constituting Wasted Work.
12. Multiple Relocations. If Authority requires the Relocation within its right-of-way of any Facility more than once during a ten-year period, Authority shall pay the cost of that second Relocation, and any subsequent additional Relocations of that Facility within such ten-year period on any subsequent or additional project.
13. Hazardous Materials. Upon discovery of Hazardous Material in connection with the Relocation, both Owner and Authority shall immediately confer to explore all reasonable alternatives and agree on a course of action, and Owner shall immediately reschedule the work to complete the Relocation in accordance with Authority's reasonable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.
  - (A) Authority will pay, in its entirety, those costs for additional necessary effort undertaken by Owner to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such conditions are attributable to Owner's existing installation or operation.
  - (B) Each party to this Master Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other party or third parties in accordance with existing law.
14. Preservation of Rights. Whenever Owner's affected Facilities will remain within the existing Private Right-of-Way of Owner, and these Facilities will fall within the right-of-way of the HSR Project under the jurisdiction of the Authority, Authority and Owner shall jointly execute an agreement for common use of the subject area which agreement shall also confirm any prior rights held by Owner in said Private Right-of Way of Owner.

15. Replacement Rights. Whenever Owner's affected Facilities will be relocated from the existing Private Right-of-Way of Owner to a new location that falls outside such existing Private Right-of-Way of Owner, the Authority shall convey or cause to be conveyed a new right-of-way for such relocated Facilities as will correspond to the existing Private Right-of-Way of Owner. For such Relocations, the Authority shall issue, or cause to be issued, to Owner, without charge to Owner or credit to Authority, appropriate replacement rights in the new location mutually acceptable to both Authority and Owner for those rights previously held by Owner in its existing Private Right-of-Way. In discharge of Authority's obligations under this Paragraph, in the event that the new location falls within the right-of-way of the HSR Project under the jurisdiction of Authority, Authority and Owner shall jointly execute an agreement for joint use of said new area which agreement shall also confirm any prior rights held by Owner in said Private Right-of-Way of Owner. In consideration for these replacement rights being issued by Authority, Owner shall subsequently convey to Authority, or its nominee, within Authority's Right-of-Way, all of its corresponding right, title and interest within Owner's existing Private Right-of Way so vacated.

Whenever Owner has secured, as of the time of Owner's receipt of the Notice to Owner, a property interest or use right in connection with Owner's AMI or SCADA equipment, Authority will compensate Owner for obtaining appropriate replacement rights or will make reasonable efforts to obtain those replacement rights for the Owner.

16. Owner's Fee Property. If the existing Private Right-of-Way of Owner includes fee title, Authority shall acquire from Owner, for just compensation under State law, those property rights required by Authority for the HSR Project by separate transaction, leaving to Owner those remaining property rights appropriate for the placement and operation of Owner's Facilities in the Private Right-of-Way of Owner.
17. Successors and Assigns. This Master Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties. None of the rights, obligations or interests of either party under this Master Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other party, not to be unreasonably withheld, in the form of a formal written amendment, except that either party may assign the Master Agreement to its successor or any entity acquiring all or substantially all of such party's assets.
18. Amendments. This Master Agreement may be amended, changed or altered by mutual consent of the parties in writing.
19. Termination Rights. Either party, upon one year's written notice, may terminate this Master Agreement, except that, notwithstanding that termination, the provisions of this Master Agreement shall remain in full force and effect with respect to any Relocation of Facilities required under a Notice to Owner issued prior to the Master Agreement termination.
20. Time of Essence. Time shall be of the essence of this Master Agreement.
21. HSR Project Funding. No state funds or resources are allocated or encumbered as against this Master Agreement and both Owner's and Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a project-specific Utility Agreement.

22. Force Majeure. Neither the Owner nor the Authority (the “non-performing Party”) shall be liable to the other for any failure to perform under this Master Agreement to the extent such performance is prevented by any occurrence beyond the reasonable control of the non-performing Party (a “Force Majeure Occurrence”), but only to the extent that the non-performing Party did not cause the Force Majeure Occurrence or that by exercise of due foresight such non-performing Party could not reasonably have been expected to avoid and that the non-performing Party is unable to overcome by the exercise of due diligence; provided that the non-performing Party claiming the excuse from performance:

- (A) Promptly notifies the other Party of the Force Majeure Occurrence and its estimated duration,
- (B) Uses reasonable efforts to mitigate the effects of the Force Majeure Occurrence, and
- (C) Resumes performance as soon as reasonably practicable after the Force Majeure Occurrence ends.

A Force Majeure Occurrence includes, without limitation: (i) an act of civil or military authority, (ii) an act of God, epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion, fire, earthquake, unusually severe weather conditions, flood or inundation, power blackout or natural catastrophe, (iii) material or facility shortages or unavailability, (iv) actions or inactions of legislative, judicial, or regulatory agencies of competent jurisdiction, including without limitation, any failure to obtain, delay in obtaining, or revocation of, any permit, license or other governmental approval or clearance or the conduct of any governmental review, (v) discovery at, near or on the site of any archaeological, paleontological, cultural, biological or other protected resources, (vi) any lawsuit seeking to restrain, enjoin, challenge or delay construction of the HSR Project or the Relocation or the granting or renewal of any governmental approval of the HSR Project or the Relocation, (vii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence affecting the HSR Project or the Relocation;

If any such event of Force Majeure occurs, upon the request of either party hereto, the Owner and the Authority will meet and confer to discuss what additional efforts are mutually acceptable to reduce impact to the HSR Project and Relocation schedules.

23. California Public Utilities Commission. As described in Recital A above, the Authority understands that the Owner is a public utility and is subject to regulation by the CPUC for certain actions and operations. The Authority further understands that Owner is required to comply with all applicable orders, rules, regulations, policies and administrative practices (“CPUC Rules”) prescribed thereby. The Authority will not require the Owner to perform any act or fail to perform any act, or require any action which would cause Owner to be in violation of CPUC Rules.

24. Notices.

- (A) Method of Transmission. All notices or other communications required or permitted to be given to a party shall be in writing and shall be (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, return receipt requested, (iii) sent by a guaranteed overnight delivery commercial courier service that provides written confirmation of delivery, to such party at its address for notices set forth as follows:

Authority: CALIFORNIA HIGH-SPEED RAIL AUTHORITY  
770 L Street, Suite 800  
Sacramento, California 95814  
Attn: Thomas Fellenz

Owner: SOUTHERN CALIFORNIA GAS COMPANY  
555 W. Fifth Street, GT11A1  
Los Angeles, California 90013  
Attn: Land and Right of Way

- (B) Time of Notice. Each such notice or other communication shall be deemed given, delivered and received upon its actual receipt, except that (i) if it is mailed in accordance with the provisions of subsection (A) above, then it shall be deemed given, delivered and received three (3) business days after the date such notice or other communication is deposited with the United States Postal Service, or (ii) if it is sent by guaranteed overnight delivery commercial courier service in accordance with the provisions of subsection (A) above, then it shall be deemed given, delivered and received one (1) business day after deposit with such commercial courier service. Either party may give a notice of a change of its contact information to the other Party in accordance with this Paragraph 24.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Master Agreement effective the day and year first written.

**SOUTHERN CALIFORNIA GAS COMPANY:**

By \_\_\_\_\_  
Dennis V. Arriola  
President and Chief Executive Officer

\_\_\_\_\_  
Date:

**CALIFORNIA HIGH-SPEED RAIL AUTHORITY**

By \_\_\_\_\_  
Jeff Morales  
Chief Executive Officer

\_\_\_\_\_  
Date:

Approved as to Form:

By \_\_\_\_\_

\_\_\_\_\_  
Date: